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APPEAL No. 2003-0893

Attorney Ref. SPI-011 (4289*114)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPLICANT: ANH SI LE : ART UNIT: 1623
SERIAL NO: 09/276,014 : EXAMINER: OWENS JR., H.
FILED: MARCH 25, 1999 : APPEAL No. 2003-0893
FOR: HYDROGENATED STARCH
HYDROLYSATE

Mail Stop Appeal Brief - Patents
COMMISSIONER FOR PATENTS
Alexandria, VA 22313-1450

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST-CLASS MAIL WITH SUFFICIENT POSTAGE IN AN ENVELOPE ADDRESSED TO: Mail Stop Appeal Brief - Patents, COMMISSIONER FOR PATENTS, Alexandria, VA 22313-1450 ON THIS 8TH DAY OF MAY, 2003.

BY: Barbara J. Smith

SUPPLEMENT TO APPEAL BRIEF

Sir:

Appellants filed an Appeal Brief on February 20, 2003, concerning the above-identified patent application. It has recently come to Appellant's attention that the United States Patent and Trademark Office has allowed claims in the divisional of the present application (USSN 09/702,210) that are of equal or greater scope than claims 1, 2 and 4-11 that are on appeal in the present application. Specifically, appellants filed the divisional application with the same claims that were originally filed in the present application (claims 1-23) and then asked the USPTO to cancel claims 1-13 of the divisional application because those claims were being prosecuted in the parent application (i.e., the present application).

Through a mistake made by the USPTO, the Examiner in the divisional application (Examiner Michael Henry in Art Unit 1623) examined and allowed the claims of the grandparent application (claims 1-11, attached hereto), which correspond closely to claims 1, 2 and 4-11 of the present application (in fact, allowed claim 1 of the divisional application is slightly broader in scope than claim 1 of the present application). The Examiner allowed the attached claims over the same primary prior art (i.e., US 5,436,329 to Caboche) that is being used by the Examiner in the anticipation rejection for claims 1, 2 and 4-12 of the present application.

Appellants have brought to the attention of the Examiner for the divisional application that he examined the wrong claims and that similar claims were on appeal in the present application. The Examiner is now attempting to retrieve the file for the divisional application so that he can determine what action to take.

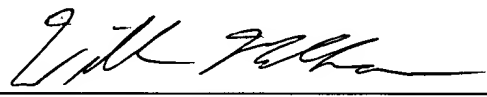
Appellants are bringing this situation to the attention of the Board so that the Board will be fully aware of what has happened and to show that another Examiner had a completely different opinion of the allowability of claims of similar scope to claims 1, 2 and 4-11 of the present application.

APPEAL No. 2003-0893

Serial No. 09/276,014

Should the Board have any questions regarding this matter, the Board is invited to telephone the undersigned attorney.

Respectfully submitted,
CONNOLLY BOVE LODGE & HUTZ LLP

By 

William E. McShane
Registration No. 32,707
Telephone: 302/658-9141

Enclosures: Allowed Claims from Divisional App. Ser. No. 09/702,210

WEM/264383



Allowed Claims from Divisional App. Ser. No. 09/702,210

1. Hydrogenated starch hydrolysate, comprising
 - A. a content of hydrogenated monosaccharides (DP=1) of less than 8 wt.-%;
 - B. a content of hydrogenated dissaccharides (DP=2) of less than 41 wt.-%;
 - C. a content of hydrogenated trisaccharides (DP=3) of less than 15 wt.-%;
 - D. a content of hydrogenated oligosaccharides of hydrogenated quat- to deca- saccharides (DP=4 to 10) of less than 30 wt.-%; and
 - E. a content of hydrogenated polysaccharides of greater than hydrogenated decasaccharides (DP \geq 11) of about 14 to about 38 wt.-%.
2. The hydrogenated starch hydrolysate according to claim 1, wherein the content of hydrogenated oligosaccharides of DP=4 to DP=10 is about 16.0 to about 29.3 wt.-%.
3. The hydrogenated starch hydrolysate according to claim 1, wherein the content of hydrogenated monosaccharides of DP=1 is about 2.6 to about 7.7 wt.-%.
4. The hydrogenated starch hydrolysate to claim 3, wherein the content of hydrogenated monosaccharides of DP=1 is about 2.8 to about 3.7 wt.-%.
5. The hydrogenated starch hydrolysate according to claim 1, wherein the content of hydrogenated polysaccharides of DP \geq 11 is about 22.5 to about 37.1 wt.-%.

6. The hydrogenated starch hydrolysate according to claim 1, wherein the content of components A to E is as follows:

- A. from about 2.6 to about 7.7 wt.-% of said hydrogenated monosaccharides (DP=1);
- B. from about 21.4 to about 40.1 wt.-% of said hydrogenated disaccharides (DP=2);
- C. from about 8.9 to about 13.6 wt.-% of said hydrogenated trisaccharides (DP=3);
- D. from about 16.0 to about 29.3 wt.-% of said hydrogenated oligosaccharides (DP=4 to 10); and
- E. from about 22.5 to about 37.1 wt.-% of said hydrogenated polysaccharides of greater than hydrogenated decasaccharides (DP \geq 11).

7. The hydrogenated starch hydrolysate according to claim 6, wherein the content of components A to E is as follows:

- A. from about 2.8 to about 3.7 wt.-% of said hydrogenated monosaccharides (DP=1);
- B. from about 25.8 to about 34.3 wt.-% of said hydrogenated disaccharides (DP=2);
- C. from about 10.4 to about 12.2 wt.-% of said hydrogenated trisaccharides (DP=3);
- D. from about 24.5 to about 29.3 wt.-% of said hydrogenated oligosaccharides (DP=4 to 10); and
- E. from about 22.5 to about 29.2 wt.-% of said hydrogenated polysaccharides of greater than hydrogenated decasaccharides (DP \geq 11).

8. The hydrogenated starch hydrolysate according to claim 1, wherein the hydrogenated starch hydrolysate has a final point glass transition temperature of from about 67°C - 92°C.

9. Sugarless hard boiled candy comprising the hydrogenated starch hydrolysate according to claim 1.

10. The sugarless hard boiled candy according to claim 9, further comprising at least one crystallizable polyol.

11. The sugarless hard boiled candy according to claim 10, wherein the at least one crystallizable polyol is at least one polyol selected from the group consisting of maltitol, isomalt, mannitol, erythritol, lactitol, sorbitol, xylitol and polydextrose.